

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-16565

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In the Matter of:

CIT GROUP, INC., ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

December 8, 2009

11:07 AM

B E F O R E:

HON. ALLAN L. GROPPER

U.S. BANKRUPTCY JUDGE

1 Motion Filed by Debtors for Approval of Disclosure Statement  
2 and Confirmation Hearing

3  
4 Motion Filed by Debtors for an Order Authorizing CIT Group Inc.  
5 to Assume Amended and Restated Long Term Incentive Program

6  
7 Motion Filed by Bank of New York Mellon for an Order Modifying  
8 the Automatic Stay and Authorizing the Release of Pledged  
9 Collateral

10  
11 Objection Filed by Jeffrey Weinberg to Approval of Plan

12  
13 Modified Second Amended Prepackaged Plan

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25 Transcribed by: Dena Page

## 1       A P P E A R A N C E S :

2       SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP

3             Attorneys for Debtors

4             Four Times Square

5             New York, NY 10036

6  
7       BY:     GREGG M. GALARDI, ESQ.

8             J. GREGORY ST. CLAIR, ESQ.

9  
10  
11       CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

12            Attorneys for Debtor

13            101 Park Avenue

14            New York, NY 10178

15  
16       BY:     STEVEN J. REISMAN, ESQ.17  
18  
19       EMMET, MARVIN & MARTIN, LLP

20            Attorneys for Bank of New York Mellon

21            120 Broadway

22            32nd Floor

23            New York, NY 10271

24  
25       BY:     EDWARD P. ZUJKOWSKI, ESQ.

1 LOWENSTEIN SANDLER

2 Attorneys for Lead Plaintiff

3 1251 Avenue of the Americas

4 New York, NY 10020

5  
6 BY: MICHAEL S. ETKIN, ESQ.

7  
8  
9 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

10 Attorneys for Lenders' Steering Committee

11 1285 Avenue of the Americas

12 New York, NY 10019

13  
14 BY: ANDREW N. ROSENBERG, ESQ.

15 ALICE BELISLE EATON, ESQ.

16  
17  
18 SONNENSCHN EIN NATH & ROSENTHAL LLP

19 Attorneys for Icahn Partners and affiliates

20 1221 Avenue of the Americas

21 New York, NY 10020

22  
23 BY: PETER D. WOLFSON, ESQ.

24 OSCAR N. PINKUS, ESQ.

1 WEIL, GOTSHAL & MANGES LLP

2 Attorneys for Citibank N.A., Citibank (China) Co., Ltd.

3 767 Fifth Avenue

4 New York, NY 10153

5  
6 BY: JOSEPH H. SMOLINSKY, ESQ.

7 DAVID N. GRIFFITHS, ESQ.

8  
9  
10 ALSO PRESENT:

11 ROBERT J. DUFFY, FTI Consulting

12 MR. JAMES KILMAN, Morgan Stanley

13 WILMER JAY LEININGER (TELEPHONICALLY)

14 DMITRI MAXIM (TELEPHONICALLY)

15 ANTONY MAZARUS (TELEPHONICALLY)

16 JOSEPH MONTGOMERY (TELEPHONICALLY)

17 STEPHEN NOFTALL (TELEPHONICALLY)

18 CHRIS STOVIC (TELEPHONICALLY)

19 MS. JANE SULLIVAN, Epiq Financial Balloting Group

## P R O C E E D I N G S

1  
2 THE COURT: All right, I'll take appearances from  
3 those in the courtroom, first, and then from anyone on the  
4 telephone who wishes to have his or her appearance noted for  
5 the record.

6 MR. GALARDI: Good morning, Your Honor. For the  
7 record, Gregg Galardi of Skadden Arps on behalf of CIT,  
8 debtors.

9 MR. ST. CLAIR: Good morning, Your Honor. Greg St.  
10 Clair with Skadden Arps on behalf of CIT.

11 MR. ROSENBERG: Good morning, Your Honor. Andrew  
12 Rosenberg, Paul, Weiss, Rifkind, Wharton & Garrison for the  
13 lenders ' steering committee.

14 MS. EATON: Good morning, Alice Eaton with Paul,  
15 Weiss, Rifkind, Wharton & Garrison on behalf of the lenders'  
16 steering committee.

17 MR. WOLFSON: Good morning, Your Honor. Peter  
18 Wolfson, and with me is Oscar Pinkus for the Icahn Associates.

19 MR. REISMAN: Good morning, Your Honor. Steven  
20 Reisman,

Curtis, Mallet-Prevost, Colt & Mosle for the debtors,  
21 conflicts counsel.

22 MR. ZUJKOWSKI: Good morning, Your Honor. Ed  
23 Zujkowski, Emmet, Marvin & Martin for the Bank of New York  
24 Mellon.

25 MR. SMOLINSKY: Good morning, Joseph Smolinsky of

1 Weil, Gotshal & Manges on behalf of Citibank N.A. and Citibank  
2 (China) Company, Limited as administrative agents for the U.S.  
3 revolver and China facility, respectively.

4 THE COURT: Anyone else in the courtroom who wishes to  
5 appear? All right, on the telephone. Does anyone wish to note  
6 his or her appearance for the record?

7 MR. STOVIC: Yes, good morning, Your Honor. My name  
8 is Chris Stovic. I'm appearing on my behalf by telephone.

9 THE COURT: All right, I have your --

10 MR. STOVIC: Motion to dismiss.

11 THE COURT: -- motion to dismiss which is really, I  
12 believe, properly characterized as an objection to confirmation  
13 of the plan. The motion was never brought on for a hearing and  
14 doesn't set grounds to dismiss the case, but I'll take it as an  
15 objection to the debtors' going forward and obtaining plan  
16 confirmation today. But I'll take, first, the debtors'  
17 presentation, and then we'll get to any objections.

18 MR. STOVIC: I've also filed, Your Honor, a motion to  
19 object to the court orders.

20 THE COURT: Yes, I've read your papers. I will give  
21 you an opportunity to speak at an appropriate time.

22 MR. STOVIC: Yes, I understand, Judge. I just wanted  
23 to --

24 THE COURT: I've read your papers. I'm perfectly  
25 aware of the documents that you have filed.

1 MR. STOVIC: Very good, sir, thank you.

2 THE COURT: All right?

3 MR. STOVIC: Yes.

4 THE COURT: Anyone else on the telephone?

5 MR. NOFTALL: Good morning, Your Honor, this is  
6 Stephen Noftall.

7 THE COURT: Stephen?

8 MR. NOFTALL: Yeah, I think you just received a letter  
9 a couple days ago.

10 THE COURT: You have a letter objecting to the plan.  
11 All right.

12 MR. NOFTALL: Not really, like, you just -- an  
13 objection, more like a modification.

14 THE COURT: All right. Anyone else?

15 MR. MAZARUS: Yes, Antony Mazarus (ph.). This is  
16 regarding my born down, the accused number 12557W --

17 THE COURT: You don't have to give me the number. I  
18 have a letter from you with regard to the plan, is that  
19 correct?

20 MR. MAZARUS: I didn't send it to you. I contacted  
21 Bennett Fielderburg (ph.), and the e-mail was copied to Mr.  
22 Galardi and all of the others listed there.

23 THE COURT: All right, very good. Then you've filed  
24 something with the appropriate parties. Anyone else on the  
25 telephone?



1 MR. MAXIM: Yes, Dmitri Maxim.

2 THE COURT: And you also have a letter objecting to  
3 the plan?

4 MR. MAXIM: Yes.

5 THE COURT: All right, anyone else?

6 MR. MONTGOMERY: Good morning, Your Honor. Yes,  
7 Joseph Montgomery.

8 THE COURT: And you're in the same position?

9 MR. MONTGOMERY: Yes, sir.

10 THE COURT: All right. Anyone else? All right, Mr.  
11 Galardi, please go ahead.

12 MR. GALARDI: Thank you, Your Honor. Again, for the  
13 record, Gregg Galardi on behalf of CIT Group. Your Honor, we  
14 had filed a notice of first amended agenda. There are three  
15 matters on the agenda today. I would like to quickly proceed  
16 through the first and the second, and then move to  
17 confirmation.

18 THE COURT: All right.

19 MR. GALARDI: The first matter on the agenda, Your  
20 Honor, is the debtors' motion authorizing CIT Group to assume  
21 an amended and restated long-term incentive program. The  
22 response deadline for that motion was December 4th. We did not  
23 receive any objections. Just briefly stated, Your Honor, the  
24 company had a long-term incentive program which included, as  
25 part of the incentives, the issuance of old common stock. If

1 we are confirmed today, that old common stock will be  
2 cancelled. What we have sought to do by this motion is to  
3 assume that long-term incentive plan, but instead, fill it with  
4 new common stock if we're successful in confirming today.

5 We have discussed this motion with the steering  
6 committee who agree to it. We did serve it out on notice.  
7 Under the program, which is substantially the same as the  
8 previous program, we could issue up to five percent, or roughly  
9 10.5 million more shares to executives, directors. No stock  
10 would be issued on the effective date. It would be subject to  
11 the new board's issuances. But we did think it would be out of  
12 an abundance of caution, to make clear that we could do that,  
13 and in fact, ultimately, have some dilutive effect on what we  
14 would be doing post-confirmation.

15 THE COURT: Well, it's in your plan, as I understand  
16 it.

17 MR. GALARDI: Correct. There is a provision that  
18 said --

19 THE COURT: It was fully disclosed. And I think the  
20 abundance of caution is unnecessary. It's in the plan, it's  
21 consistent with 1129, which requires that matters be disclosed,  
22 and it's, I assume, it's either within the powers of the board  
23 to adopt as a matter of corporate law, or it's part of your  
24 plan and adopted as such, at least initially. Your motion is a  
25 motion that, as far as I can tell, relies entirely on the

1 business judgment of the debtor. I don't think it even  
2 mentions Section 503(c) of the Bankruptcy Code.

3 MR. GALARDI: Correct, Your Honor.

4 THE COURT: And therefore, I think the belt and  
5 suspenders is improper. We don't need this belt and  
6 suspenders. I will enter an order providing the plan is  
7 adopted, the incentive plan is adopted pursuant to the plan of  
8 reorganization. But I certainly am not going to approve an  
9 incentive plan that doesn't even recognize the existence of  
10 Section 503(c).

11 MR. GALARDI: And Your Honor --

12 THE COURT: I've already written, in another case,  
13 that I don't believe 503(c) precludes a plan of any type  
14 adopted by debtors as part of a confirmed reorganization plan.

15 MR. GALARDI: And, Your Honor, because it was a go-  
16 forward, postconfirmation, we understand Your Honor's opinion,  
17 which is why we didn't mention 503(c). And it was just simply  
18 to make sure that everyone's aware of the five percent. But I  
19 understand Your Honor will take it pursuant to confirmation,  
20 and I appreciate that.

21 THE COURT: Well, perhaps, if you wish to revise the  
22 order, that's fine, or I'll enter an appropriate order.

23 MR. GALARDI: Your Honor, actually, what we could  
24 do -- well, maybe we'll just revise the order just to make it  
25 clear that that's five percent, because that was the only

1 concern we had that the number had to be disclosed. But we do  
2 believe it was fully disclosed in the plan that we would adopt  
3 this. In fact, it's less than the percentages that were in the  
4 previously plan. So we don't think there's a material  
5 modification. But we wanted to make sure everybody had notice  
6 of it.

7 THE COURT: I think that's fine. And I appreciate  
8 that. But just seems to me that if it's adopted separately, we  
9 get into a question that at least I have to consider 503(c).  
10 If it's adopted under the plan, which is the way I think it  
11 should be, and I commend the debtors for doing it that way,  
12 then I think -- I'm not sure -- I don't believe 503(c) has any  
13 applicability, and certainly a debtor that gets out of Chapter  
14 11 has the right to adopt incentive plans in accordance with  
15 applicable nonbankruptcy law.

16 MR. GALARDI: And --

17 THE COURT: So I think we'll enter an appropriate  
18 order. Does anyone wish to be heard on this issue? All right,  
19 then we'll enter an appropriate order.

20 MR. GALARDI: Your Honor, the next matter on the  
21 agenda is not our motion. It's the motion of Bank of New York,  
22 but I would note for the record that we had no objection to the  
23 lift stay and no objection to the form of order. So I don't  
24 know if -- I know counsel is here.

25 MR. ZUJKOWSKI: Good morning, Your Honor. Ed

1       Zujkowski of Emmet, Marvin & Martin for the Bank of New York  
2       Mellon. As Mr. Galardi stated, this is a technical motion.  
3       It's designed to free up certain securities that Bank of New  
4       York holds as collateral agent for the debtor.

5               THE COURT: Does anyone -- let me ask. The debtors  
6       don't object. Does anyone wish to be heard?

7               All right, I'll grant the motion.

8               MR. ZUJKOWSKI: Your Honor, may I hand up an order?  
9       Thank you.

10              THE COURT: Surely. Thank you.

11              All right, now we proceed to the main issue, which is  
12       confirmation of the plan.

13              MR. GALARDI: Correct, Your Honor. Moving, now, to  
14       the last matter on the agenda, which is the scheduled hearing  
15       on both the disclosure statement and confirmation of the plan,  
16       Your Honor, we have in the courtroom today, I'd like to  
17       introduce Mr. Robert Duffy who has testified at the first day.  
18       We have also submitted his declaration in support of  
19       confirmation. He's in the front row. We also have Mr. James  
20       Kilman who is -- raised his hand in the back, whose declaration  
21       we introduced in support of confirmation. And also, we have  
22       Ms. Jane Sullivan whose declaration was put in in support of  
23       confirmation, as well, with respect to the voting tabulation  
24       reports.

25              Your Honor, I can go through -- and I'll leave it to

1 Your Honor -- we think, how best to proceed. I can go through  
2 why we think our plan has, in fact, satisfied the conditions  
3 for approval of the disclosure statement. Your Honor is  
4 familiar with those. We have, in fact, filed and as a matter  
5 of the record, and we'd ask Your Honor to take into evidence in  
6 support of the confirmation and disclosure statement various  
7 documents that have been filed including the offering  
8 memorandum, the amended offering memorandum, the supplement to  
9 the offering memorandum. As Your Honor is well aware, the  
10 adequacy of the disclosure statement, those were all filed for  
11 Your Honor's record at docket number 19.

12 We have also -- we can go through the analysis, Your  
13 Honor. It's normally a nine-factor analysis. I can point Your  
14 Honor to records in the disclosure statement as to why we  
15 believe the disclosure statement is adequate. All of the  
16 objections raised with respect to confirmation, Your Honor, did  
17 not go to the adequacy of the disclosure statement.

18 THE COURT: Right. Let's start with the question of  
19 the disclosure statement. Since this is filed as a prepackaged  
20 plan, among other things, I have to find that the disclosure  
21 circulated, disseminated prior to the petition date was  
22 adequate under Section 1125 of the Bankruptcy Code. I don't  
23 believe that any of the filings I have assert that the  
24 disclosure statement was not adequate, and I'll ask if anybody  
25 wants to be heard on that separate issue. I've reviewed the

1 dis -- all right?

2 Hearing no one, I have reviewed the disclosure  
3 statement and find that it is adequate for the purposes for  
4 which it was prepared and disseminated within the meaning of  
5 Section 1125 of the Bankruptcy Code. And so I think that  
6 issue, as far as I'm concerned, is resolved.

7 MR. GALARDI: Moving, then, to confirmation standards,  
8 Your Honor. Your Honor is very familiar with 1129(a) and (b).  
9 Again, we have -- I can go through a detailed list, but my  
10 reading of the objections that are outstanding do not go to the  
11 adequacy of the disclosure statement, except for a couple of  
12 issues that I am aware of which I take to be more valuation and  
13 treatment of particular claimants. In particular, Your Honor,  
14 we think we have classified claims properly according to the  
15 priority scheme. We have separately classified a number of  
16 classes, claims, and to the extent the claims are of the same  
17 priority in the scheme, they have gotten the same recovery,  
18 though they may be in separate classes. We do believe that  
19 those claims are, in fact, treated fairly under the plan. As  
20 I've already mentioned as evidence by Ms. Sullivan's --

21 THE COURT: All right, let's start with that. Ms.  
22 Sullivan has filed a certification of voting that is on file  
23 with the Court showing that each of the voting classes has  
24 voted in favor with the plan in accordance with the required  
25 amounts for numerosity and amount. I don't know if there is

1 anyone who wishes any further record made with respect to the  
2 certification of votes. If anyone wishes to be heard? Hearing  
3 no one, then we'll accept that and accept the tabulation of  
4 ballots that shows that in most of the classes there was  
5 overwhelming acceptance of the plan.

6 MR. GALARDI: All right, and I would only note, Your  
7 Honor, that the only class that was a close call, I believe,  
8 was either 10 or 11, and we --

9 THE COURT: It was 10 by the tabulation I have in  
10 front of me.

11 MR. GALARDI: 10 by the tabulation, and actually,  
12 pursuant to our plan, we treated them as one collective class,  
13 but Ms. Sullivan wanted to illustrate, as did we, that even if  
14 they were separately classified, that, in fact, we would have  
15 overwhelmingly gotten the support. But we essentially treated  
16 term debt and credit agreements separately, which is why we  
17 also took their votes separately. So either way, we would have  
18 passed the standard, and that is the point because she also  
19 added a combined vote to show that it was even better than the  
20 sixty-six and two-thirds and fifty percent in amount.

21 THE COURT: All right.

22 MR. GALARDI: Your Honor, then, going on with respect  
23 to the rest of the objections, as we read the objections, what  
24 the objections raise is, essentially, I think a fundamental  
25 question which we think is actually addressed by Mr. Duffy's



1 declaration but having many of the pro se people on the phone,  
2 I'm not sure they had an opportunity to read that declaration.  
3 As we read the declaration, there were, essentially, two themes  
4 plus one concern. The first concern was a gentleman, I think  
5 it was Mr. Weinberg, raised a concern that he had 1000 dollars  
6 of bonds, and Your Honor had asked us, or the Court had asked  
7 us to respond to that, that they were still going to get  
8 shares.

9 THE COURT: Right.

10 MR. GALARDI: And we did, in fact, put on the docket a  
11 letter response by our firm to Mr. Weinberg that does explain  
12 that you will not -- because of the fractional share, and we  
13 understand it's a complicated formula --

14 THE COURT: But you're issuing shares in dollar --

15 MR. GALARDI: Dollar amounts.

16 THE COURT: -- amounts. There's no minimum, as I  
17 understand.

18 MR. GALARDI: That is correct. And it's whole  
19 numbers, Your Honor, and then there is a more sophisticated  
20 mechanism for partial shares. But with respect to people who  
21 even hold low amounts of bond debt, they will, in fact, receive  
22 shares and bond debt in small increments. So that was -- and  
23 that resolved that gentleman's objection, my understanding.  
24 And I did not hear anything on the phone to the contrary.

25 THE COURT: No, we -- I think --

1 MR. GALARDI: He filed.

2 THE COURT: -- he filed or wrote a letter that his  
3 objection was resolved, and I think that this treatment of  
4 small creditors is fair. This has not been the policy of every  
5 debtor that sometimes has another cutoff. And I think this is  
6 a particularly fair treatment of small holders of your debt.  
7 All right.

8 MR. GALARDI: Your Honor, there was one other  
9 objection that was withdrawn, I believe, late last night or  
10 this morning. There was a reservation of rights filed by the  
11 Canadian noteholders which was Class 7. They reserved their  
12 rights to see the final form of documentation. We received  
13 word last night, and I believe they have filed this morning --

14 THE COURT: Yes, I saw.

15 MR. GALARDI: -- a notice withdrawing that reservation  
16 of rights, stating that the documentation is reasonably  
17 acceptable to them, so we have, in fact, resolved that  
18 objections, as well.

19 Then, Your Honor, there is a series of objections.  
20 And I will say most of them come from common stockholders. I  
21 think one or two from a bondholder, some of the people on the  
22 phone, and another from a preferred stockholder. And I think  
23 it goes to the fundamental question of how can you breach your  
24 bond contract. That was one way it was stated. That may be  
25 the motion for dismiss. The second was, how is it that a

1 company could have, let's just say 5 or 8 -- 6 billion dollars  
2 of book-value equity on its balance sheet and yet not make any  
3 distribution to the common shareholders. And I think the third  
4 was, I will say, counterproposals to our plan saying that in  
5 our exchange offer, there was an opportunity for common  
6 stockholders to receive up to 2.5 percent of the equity of the  
7 company, had the exchange offer succeeded and had the  
8 recapitalization succeeded. So a number of claimants said that  
9 that would be a fair treatment with respect to the plan of  
10 reorganization. And that's how I read the numerous objections.  
11 And I think some of those people are on the phone.

12 Your Honor, I would point out in the declarations of  
13 Mr. Duffy and Mr. Kilman, I think those issues are resolved --  
14 well, are addressed, I should say. And I also could put on a  
15 verbal proffer of Mr. Duffy if Your Honor thinks it would be  
16 helpful for the claimants on the phone. I think that may give  
17 a way to distinguish between book value on your financial  
18 statements and what we find is the valuation testimony from Mr.  
19 Kilman as affirmed in his declaration, as well as the analysis  
20 that Mr. Duffy has done as to why book value, from an  
21 accounting perspective, need not compute into our recovery for  
22 stockholders in a bankruptcy plan. I look to Your Honor as to  
23 how you think best to proceed. I think it is in those  
24 declarations.

25 THE COURT: Well, it is in the declarations, but the

1 individuals on the phone probably have not seen them. First, I  
2 assume you would like to have their declarations part of the  
3 record?

4 MR. GALARDI: Yes, Your Honor, we would move into  
5 admission the declarations of Ms. Sullivan, Mr. Duffy, and Mr.  
6 Kilman.

7 THE COURT: All right, does anyone wish to be heard as  
8 to receiving those? All right, then we'll do that.

9 (Declaration of Ms. Sullivan was hereby received into evidence  
10 as of this date.)

11 (Declaration of Mr. Duffy was hereby received into evidence as  
12 of this date.)

13 (Declaration of Mr. Kilman was hereby received into evidence as  
14 of this date.)

15 THE COURT: As to the issues, and I think you've  
16 summed them up, I think we should have a proffer, or if  
17 possible, very brief testimony by one or more of your  
18 witnesses, on those issues. I recognize that literally  
19 billions of dollars of debt has agreed to this plan. And it's  
20 an enormous achievement. I'm not getting to the final result,  
21 but to have gotten the vote that you've gotten is an  
22 achievement. And I don't denigrate it.

23 On the other hand, I realize that the individuals on  
24 the phone may be losing their savings, their life savings or  
25 funds that are extremely important to them. And I think it

1 would be appro -- and that is probably true of many people  
2 throughout the country. Proceedings of this nature produce a  
3 great deal of hardship. On the other hand, the Bankruptcy Code  
4 is designed to discharge debtors and give them a fresh start  
5 for a very good purpose, and a purpose that, in this case, is  
6 served by the -- or is underscored, I should say, by the  
7 importance of this entity, and it's important place in the  
8 economy. So think if we had a very brief testimony on the  
9 narrow issues that have been raised, i.e., the value, the  
10 difference between actual value and book value, and what  
11 happened to, in effect, eliminate this very large book value, I  
12 think it would be useful as a matter of record, and I'm sure  
13 the people on the telephone would appreciate that. Is that  
14 practical?

15 MR. GALARDI: That's acceptable, Your Honor. Let me  
16 ask -- yes, it's absolutely practical. Let me just ask my  
17 witness one question.

18 THE COURT: Well, I can take a five-minute break, if  
19 you'd like me to.

20 MR. GALARDI: Three seconds will be enough.

21 THE COURT: All right.

22 MR. GALARDI: Your Honor, I think given the  
23 attendance, and obviously, I hundred percent agree with Your  
24 Honor that it's a serious issue for people who are losing their  
25 savings. I think it's probably better to put Mr. Duffy on the

1 stand and just asked a few questions so he can explain it --

2 THE COURT: I think --

3 MR. GALARDI: -- rather than a proffer.

4 THE COURT: I think it would be very useful. And then  
5 the individuals on the phone can hear Mr. Duffy, and then I can  
6 proceed to consider their objections.

7 Please state your name for the record.

8 MR. DUFFY: Mr. Duffy.

9 (Witness duly sworn)

10 THE COURT: Please be seated. For those on the  
11 telephone, Mr. Duffy has just taken the witness stand and he's  
12 about to be examined briefly by Mr. Galardi who is counsel for  
13 CIT in these Chapter 11 proceedings.

14 DIRECT EXAMINATION

15 BY MR. GALARDI:

16 Q. Mr. Duffy, could you state by whom you're employed?

17 A. FTI Consulting.

18 Q. And what is its role with respect to these cases?

19 A. We are one of the debtors' financial advisors.

20 Q. Okay, and in the context of your responsibilities, have  
21 you had an opportunity to review the objections by a number of  
22 the people that are on the phone?

23 A. Yes, I have.

24 Q. Okay, and what sort of accounting credentials do you have?

25 A. I have worked in working with restructured companies for

1 well over twenty years.

2 Q. Okay, and could you explain what, in very brief terms,  
3 what book value means?

4 A. Book value is really the value of a company's assets as  
5 per their financial statements.

6 Q. Okay, and how do you arrive at a book value?

7 A. It's based on the historical cost of those assets.

8 Q. Okay, and in your experience, does book value always  
9 reflect market value?

10 A. No, it doesn't.

11 Q. Can you explain why?

12 A. Well, I mean, book value is based on the historical costs,  
13 as opposed to market value is based on what those assets are  
14 worth today or what those assets can generate in terms of cash  
15 flows based on the assets.

16 Q. Okay, so Mr. Duffy, am I correct that the objections  
17 queried whether -- how could a company have certain book value,  
18 5, 6 billion dollars, and yet no recovery to the equity or  
19 common shareholders?

20 A. Yes.

21 Q. In your own words, how can that be the case?

22 A. Well, the reason that's the case is the book value is  
23 based on what the original assets were acquired at, and just  
24 because the original assets were acquired at a certain value  
25 doesn't mean that those assets, today, are worth that same

1 amount. It's similar to, maybe, a house. If you buy a house,  
2 just because you bought your house and you paid 50,000 dollars  
3 or 100,000 dollars for your house, that doesn't mean that your  
4 house is still worth 50 or 100,000 dollars. In fact, the value  
5 of your house can go down. Similarly, the value of a company's  
6 assets can go down.

7 Q. Okay, have you read the valuation in the plan and  
8 disclosure statement?

9 A. Yes, I have.

10 Q. And what is your understanding of the range of value in  
11 the plan for the reorganized CIT's equity?

12 A. I think the midpoint of the value is about 8 billion  
13 dollars.

14 Q. And do you have an understanding of how much debt is being  
15 reduced pursuant to this plan?

16 A. Yes, I do.

17 Q. And does that provide any explanation to the people on the  
18 phone as to why they might not or should not receive value  
19 under a plan of reorganization?

20 A. I think it does.

21 Q. Can you explain why?

22 A. Yes. The midpoint of the valuation is 8 billion dollars.  
23 There's well north of 11 billion dollars of debt that is  
24 getting extinguished. And as you understand and look at the  
25 value, in addition to the unsecured debt, there's also



1 preferred notes that also would come before the common equity.  
2 So even if -- even before you take into account the preferred  
3 and you look at the valuation, even if you looked at any high  
4 range of valuation, there wouldn't be money in any circumstance  
5 that would be available to the common shareholders.

6 Q. So that's even under a reorganized CIT value.

7 A. Yes, that's under a reorganized CIT value.

8 Q. Okay, and Mr. Duffy, just briefly, are there circumstances  
9 that happened between July and today that also may have hurt  
10 the market value of their assets?

11 A. Yes.

12 Q. Okay, and could you explain that.

13 A. I think as we've gone through and the business has  
14 operated, there's been -- the business has -- there's been  
15 pluses and minuses, and there's been operational items that  
16 could have affected the value.

17 Q. Okay, and let me ask you. Did FTI do the liquidation  
18 analysis?

19 A. Yes, we did.

20 Q. And what does the liquidation analysis show with respect  
21 to a return to equity?

22 A. It shows that there'll be no return to equity.

23 Q. And what about with respect to a return to the preferred  
24 stockholders?

25 A. There'll be no return to the preferred stockholders.

1 MR. GALARDI: Your Honor, I would pass the witness to  
2 anybody on the phone.

3 THE COURT: Well, that'd be difficult for parties on  
4 the phone to examine a witness, and that's not usually  
5 practice, but I should ask if anybody on the telephone wishes  
6 further explanation. The testimony, as I understand it, is  
7 that the value of the company that is set forth in a separate  
8 declaration which is part of the record, at the midpoint is,  
9 today, 8 billion dollars.

10 THE WITNESS: Yes.

11 THE COURT: That's the best estimate of the experts,  
12 as I understand it. The debt, today, is before its adjusted  
13 under the plan, is 11 billion dollars. And that's debt of the  
14 company, is that correct?

15 THE WITNESS: No.

16 MR. GALARDI: I think the correct way to say it, Your  
17 Honor, is the debt is being reduced pursuant to the plan --

18 THE WITNESS: Right.

19 THE COURT: Yes.

20 MR. GALARDI: -- somewhere between 10.5 and 11 billion  
21 dollars.

22 THE COURT: 10.5 and 11 billion dollars.

23 THE WITNESS: That is correct.

24 THE COURT: That's the debt that's being adjusted --

25 MR. GALARDI: Adjust in the plan.

1 THE COURT: -- in the plan.

2 THE WITNESS: Yes.

3 THE COURT: Or affected by the plan.

4 THE WITNESS: That's correct.

5 THE COURT: So there's additional debt over and above  
6 that, I gather.

7 THE WITNESS: Yes.

8 THE COURT: All right. Under those circumstances,  
9 there is simply no value for the common equity, and there's no  
10 value for the preferred equity, as I understand your testimony.

11 THE WITNESS: That is correct.

12 THE COURT: And I gather that one of the holders of  
13 the preferred equity is the United States.

14 THE WITNESS: That is correct.

15 THE COURT: They hold the most recent tranche of  
16 preferred debt, is that correct?

17 THE WITNESS: That is correct.

18 THE COURT: And they're receiving the same lack of  
19 recovery as all the other preferred shareholders, as I  
20 understand it.

21 THE WITNESS: That is correct.

22 THE COURT: And that's even though they put in -- I  
23 gather they bought the preferred stock fairly recently, is that  
24 correct?

25 THE WITNESS: That is correct.

1           THE COURT: All right. All right, does anyone who has  
2           inquired about these matters and filed papers with the Court  
3           wish to raise any issues or wish any further testimony on these  
4           issues? I think perhaps the best way to proceed is for them to  
5           raise issues with me, but I wanted the parties to hear directly  
6           from those who had filed declarations with the Court so that  
7           they could understand that we do not take this step lightly in  
8           terms of confirming the plan. On the other hand, the  
9           Bankruptcy Code is available, in appropriate circumstances, to  
10          reduce debt and the affected bond debt, here, is being reduced,  
11          substantially, under the plan, and to, in some cases, provide  
12          no return for the common equity. Or the preferred equity, in  
13          this situation.

14          MR. STOVIC: I object, Your Honor, to the comments  
15          made by FTI, Mr. Duffy.

16          THE COURT: He's not the FBI. He's FTI. I assure  
17          you, he is not a representative of the FBI.

18          MR. STOVIC: I said FT.

19          THE COURT: FT. All right, and you are Mr. Stovic?

20          MR. STOVIC: Stovic, yes, sir.

21          THE COURT: All right.

22          MR. STOVIC: All right, I'd like to take a step  
23          forward in respect to his explanation pertaining to the  
24          historical value, and so forth, I have no dispute pertaining to  
25          that. I am aware of the things. Okay, what matters up here is

1 particularly for the noteholders, that I didn't buy the  
2 property for equity to benefit such as the equity holders,  
3 stockholders. Indeed, even to make gains or so forth. We  
4 bought, knowing it would become draft on the day of maturity.  
5 That's the day that they filed for Chapter 11 bankruptcy. That  
6 was on Sunday. To my knowledge, most of the courts were closed  
7 on Sunday. That probably means that the bankruptcy court take  
8 for granted that it was filed in time. That results in not  
9 paying the notes which were draft on the date when they filed  
10 for Chapter 11 bankruptcy. This is preuse of the funds. And  
11 they were not invested for the long term. There was a specific  
12 date, including the net --

13 THE COURT: All right.

14 MR. STOVIC: -- and that's why those bonds were  
15 bought.

16 THE COURT: All right.

17 MR. STOVIC: Bought for that.

18 THE COURT: I understand your argument, Mr. Stovic,  
19 and I have your papers in front of me. So I understand your  
20 argument.

21 MR. STOVIC: I would like to make one more note, okay?

22 THE COURT: All right.

23 MR. STOVIC: I know that you are aware of it, okay,  
24 but I use for an example Penn Traffic Corporation (sic). In  
25 the past eleven years, they filed three times under Chapter 11

1 bankruptcy, okay? Once, we convert the notes to equities, with  
2 par value, whatever it will be, which is a worthless security.  
3 I'm being exchanged the draft for worthless security. That's  
4 what it amounts to.

5 THE COURT: All right.

6 MR. STOVIC: That will be my final comment on that,  
7 sir.

8 THE COURT: Thank you.

9 MR. STOVIC: I just want you to be aware of it.

10 THE COURT: Thank you. Well, I'm not necessarily --  
11 I'm aware of your argument, and I will deal with it in a  
12 moment.

13 MR. NOFTALL: Yes, Your Honor. This is Stephen  
14 Noftall.

15 THE COURT: Stephen?

16 MR. NOFTALL: There was a 10.5 billion dollars of debt  
17 in use?

18 THE WITNESS: Yes, that's correct, 10.5 to 11.

19 MR. NOFTALL: Sure, the last time you had something  
20 like 5 billion dollars which was equity. So we're trying to  
21 understand this, like, 15 billion dollars of assets were  
22 reduced?

23 THE COURT: No, that doesn't follow, sir. You can't  
24 just add debt and equity together and get a number. The equity  
25 comes behind the debt. The debt has to be satisfied before the

1 equity has a recovery, ordinarily, in a bankruptcy situation.  
2 That's why parties by debt, rather than equity.

3 MR. NOFTALL: Yeah, my concept was the assets were  
4 reduced down, too, in the reorganization, right?

5 THE COURT: Yes.

6 MR. NOFTALL: So there's a significant amount of  
7 write-off -- or write-downs, here, in terms of the assets.

8 THE COURT: Yes.

9 MR. NOFTALL: There's 10 billion dollars of debt being  
10 reduced, but substantially more assets being reduced.

11 THE COURT: Yes.

12 MR. NOFTALL: Yeah, okay, the point being that while  
13 the debts are being reduced, substantially, the assets are  
14 being also reduced, substantially, as well. So, yes, the point  
15 is that this is kind of like you -- the witness mentioned the  
16 house value being, like, buying at 100,000 dollars, and now it  
17 being worth scrap. At the same token, that could be valued  
18 more in the next two or three years from now. And as it stands  
19 right now, in bankruptcy, it's about scarcing 5 billion to  
20 something like 11 billion and it's not what the real common  
21 equity is. So it's kind of a -- anyway, sorry, lost my train  
22 of thought.

23 THE COURT: All right. I think I understand your  
24 observation. But just to make this comment, as a matter of  
25 practice, in bankruptcy, we have to do the valuations as of the

1 confirmation date and proceed from there. Obviously, the  
2 debtors may do better in the future. The comment from Mr.  
3 Stovic a few moments ago was that he expected the debtors to do  
4 worse. One never knows, but one does the valuation as best one  
5 can as of the time of the confirmation, ordinarily, and can't  
6 wait for things to improve if they do.

7 Anyone else wish to be heard? All right, Mr. --

8 MR. MONTGOMERY: Joseph Montgomery. You're going to  
9 have to give me a little bit of leeway, here, on my ignorance,  
10 but I'll try to make this brief.

11 THE COURT: Well, it will -- if Mr. Montgomery --  
12 well, go ahead.

13 MR. MONTGOMERY: I understand -- I mean, it's tough  
14 for me to dig into everything that was accomplished. This  
15 thing, all the publications, they kept revising it. And it's  
16 tough for me to comprehend it. But is it fair to say that each  
17 of all the other classes are going to get, like, seventy cents  
18 on the dollar?

19 THE COURT: You'll have to refer to the disclosure  
20 statement and the summary which has a projection as to the  
21 recovery of each of the individual classes. I gather that you  
22 are a holder -- I'm looking at your letter of --

23 MR. MONTGOMERY: I'm a preferred holder --

24 THE COURT: -- preferred stock. And I gather the  
25 preferred stock recovery is deemed of no value, and therefore,



1       you're not a voting party. Mr. Galardi, is that correct?

2               MR. GALARDI: Yeah, Your Honor, to go through, the  
3       senior unsecured gets seventy cents in debt and then equity, so  
4       he's correct on that. There are still two classes that are  
5       senior to the preferred. There is a subdebt class and a junior  
6       subdebt that get percentages of equity. So based on an 8  
7       billion dollar equity value, there's a recovery, but it's not  
8       at that seventy cents level. And then the preferred get the  
9       contingent value rights --

10              THE COURT: Right.

11              MR. GALARDI: -- because if somehow this stock trades  
12       favorably, he would get a recovery, which is, as Mr. Kilman is  
13       prepared to take the stand, there is some variability in doing  
14       any valuation analysis. And so there is a potential that he  
15       may get a recovery based on straight economic value of the  
16       stock upon emergence.

17              MR. MONTGOMERY: And I do understand that, thank you.  
18       But from what I understood, the upper class would get seventy  
19       cents on the dollar, and then they're also getting thirty cents  
20       in new common, which, you know, my math is probably a little  
21       bit different than everybody else's but that seems to add up to  
22       a hundred percent of, or almost, of recovery, when we're,  
23       preferred and common, get nothing. And that's my  
24       interpretation of that, and, you know, on the issuance of new  
25       common, you can give out in, you know, in layman's terms, you

1 can give that out in restitution for, you know, any loss. It  
2 just doesn't seem fair to the people that have invested for so  
3 long and held onto it for so long, even before the government.  
4 So --

5 THE COURT: All right.

6 MR. MONTGOMERY: -- I would like to hear how that  
7 seems fair.

8 THE COURT: All right, I'll note your position.  
9 Perhaps I could, on your behalf, ask the witness one question.

10 Is it your understanding, Mr. Duffy, that any creditor  
11 is receiving more than a hundred cents in respect of the  
12 creditor's claim in these cases?

13 THE WITNESS: No.

14 THE COURT: All right. That is an appropriate  
15 question, Mr. Montgomery. Is any creditor getting more than a  
16 hundred cents on the dollar? And the answer to that is no.  
17 I'm sure the creditors in the room would agree with that.

18 MR. MONTGOMERY: Okay. Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. HOLLINGSWORTH: Yes, this is --

21 THE COURT: All right.

22 MR. HOLLINGSWORTH: -- Robert Hollingsworth. Can I  
23 weigh in?

24 THE COURT: Well, you can't weigh in, but if you have  
25 a question and you have a statement you wish to make, you may

1 make it. I have your letter, I assume, Mr. Hollingsworth, and  
2 I will get it in front of me.

3 MR. HOLLINGSWORTH: Yes, thank you. I just want to  
4 say one thing very brief on this issue. I accept Mr. Duffy's  
5 comments about assets -- market assets versus those that are  
6 held on books. I feel like there's a fairness issue, here,  
7 being that the bondholders but not the shareholders were given  
8 the opportunity of voting for the October 2nd exchange offer,  
9 the reorganization, which would have provided common  
10 shareholders a two and a half percent stake, or else they had  
11 the choice of voting for, you know, the prepackaged bankruptcy,  
12 which is what we're doing now, effectively keeping for  
13 themselves that 2.5 percent stake. And although I know that  
14 the argument has been made this morning that liabilities are  
15 actually greater than assets at market value, I think that  
16 that's an open question going forward because market conditions  
17 can change. So given that, and given that the bondholders but  
18 not the shareholders were given a choice to cut out the  
19 shareholders, I feel like there is a fairness issue, and that  
20 it would be a much more equitable, fair solution to actually  
21 give the shareholders, which were not, apparently, represented  
22 by anyone, their interests were not represented very well by  
23 anyone on the CIT board, who would give them a two and a half  
24 percent stake.

25 THE COURT: Well, thank you. I will -- let me just

1 make two observations. First, it is correct that the  
2 shareholders weren't given the opportunity to vote, but they  
3 were presumed to have voted no because they were not receiving  
4 any direct and substantial recovery, although there is a  
5 possibility of a recovery under the contingent value rights, as  
6 I understand it. The board of this company, like all  
7 companies, is ultimately elected by shareholders. I assume  
8 this board was originally elected by shareholders, and I don't  
9 think that the voting structure of the Bankruptcy Code is  
10 designed not to have shareholders represented, but the reason  
11 the creditors voted is because they're not receiving in their  
12 recovery a clear one hundred cents on the dollar. They were  
13 solicited to determine whether they were satisfied in their  
14 recovery, and then in allowing certain recovery to be allocated  
15 to the more junior classes.

16 As to the fact that market conditions can change, yes,  
17 they can, but as I said earlier, the ordinary rule is that we  
18 determine conditions as they are today.

19 So I think -- have we dealt with all the principles  
20 that have been raised by parties? Then Mr. Stovic, I will come  
21 back to your objection.

22 As to the possibility of a further second or third  
23 reorganization that you referred to, I cannot assume that. I  
24 have before me the feasibility analysis that the debtors have  
25 prepared, indicating that they can succeed under this plan. I

1 have literally billions of dollars of debt that have voted in  
2 favor of it and believes that the instruments they'll be  
3 receiving under the plan have value and the plan has been  
4 constructed in a professional fashion and supported by two  
5 experts, Mr. Duffy and also the affidavit filed by an officer  
6 of Morgan Stanley.

7           You also raised the issue that your notes matured on  
8 the very day of the filing. Well, unfortunately, the maturing  
9 of those notes might have been the final act or final cause of  
10 this debtor actually to file. But the fact that the notes  
11 matured prior to the bankruptcy or on the day of the bankruptcy  
12 does not give you any greater or lesser rights than any other  
13 bondholder would have. The filing, in effect, accelerates all  
14 of the bonds and makes them all due immediately, and a note  
15 that's a week overdue or a year overdue doesn't have any  
16 greater rights than a note that hasn't quite come due except  
17 that you might be entitled to interest to the date of the  
18 filing. So for those reasons and for the reasons expressed,  
19 and based on the testimony, I will overrule your objection and  
20 I will overrule the other letters and objections filed on the  
21 ground that the Bankruptcy Code permits debt to be discharged  
22 or written down, that stockholders are not entitled to a  
23 recovery unless there is value for the stockholders or unless  
24 the other creditors adopt a plan that provides otherwise. And  
25 as this plan has been presented and adopted after an enormous

1 amount of negotiation and effort, the plan does not call for  
2 recover to stockholders, except for the limited recovery  
3 provided to preferred holders. The plan has been supported in  
4 terms of the showing of insolvency and the propriety of the  
5 fact that there is no recovery for stockholders by the  
6 testimony of two witnesses, and including the testimony of Mr.  
7 Duffy. And I find that this is sufficient to overrule the  
8 objections.

9 As to the other plan conditions, the debtors have to  
10 satisfy the various subsections of 1129(a) and (b) and I find,  
11 based on the record, that they have done so. No substantial  
12 issue has been raised with regard to any of the specifics of  
13 1129(a) or (b) other than the matters that I've dealt with just  
14 a few moments ago.

15 MR. STOVIC: Objection to what's based mainly on two  
16 points. I'll give it to you. Told you, it's the United States  
17 Constitution, Article Four, would property rights to be secure  
18 in their papers. I find that I am not secure in my papers.  
19 And number two, other one is the prohibition of Article One,  
20 Section X, of the United States Constitution for it impairs the  
21 obligation of contract. So, therefore, I believe that the  
22 bankruptcy court rules are a violation of the Constitution in  
23 respect to the rights of the people under the provided lines of  
24 the Constitution.

25 THE COURT: All right, Mr. Stovic, I will overrule

1 your objection. The United States Constitution contains a  
2 bankruptcy clause within its terms, and the bankruptcy clause,  
3 pursuant to the bankruptcy power, the Congress has adopted a  
4 Bankruptcy Code that permits the steps taken in this case. And  
5 that is not withstanding the provisions of the Constitution  
6 respecting the impairment of contracts or, in this case, any  
7 security interests have been observed. And I don't believe  
8 your debt has any security attached to it, any lien or pledge  
9 attached to it. So --

10 MR. STOVIC: No, there is no security attached to it.

11 THE COURT: Well, sir, I am overruling your objection.  
12 Thank you. We're now proceeding forward.

13 MR. STOVIC: Go ahead.

14 MR. HOLLINGSWORTH: Your Honor, may I say one more  
15 consideration, quickly?

16 THE COURT: Go ahead.

17 MR. HOLLINGSWORTH: I believe you would have it within  
18 your right for a consideration to extend the period of which  
19 the CVRs are valuated. And since, again, it has been presented  
20 to the Court, these are people's savings and savings for their  
21 kids, and in the future, I would like to ask the Court if you  
22 would consider to extend the period to which the CVRs are  
23 valuated. And if that is within your right, I hope you would  
24 consider it. And thank you for letting me interrupt.

25 THE COURT: No, you -- I will pass your request to Mr.

1 Galardi on behalf of the company. I don't know if the company,  
2 under the plan, has any discretion in that respect. I can  
3 certainly respond as for the Court. The Court has no power to  
4 rewrite a plan that comes before it.

5 MR. HOLLINGSWORTH: Okay, thank you. I'm sorry to  
6 interrupt.

7 THE COURT: But, I will ask Mr. Galardi, in due  
8 course, to take up the issue with his client. I'm sure members  
9 of the management are here and if they can consider it, I think  
10 they've heard your statement.

11 MR. HOLLINGSWORTH: Thank you very much, Your Honor.

12 MR. GALARDI: And Your Honor, I can address it --

13 MR. MAXIM: Your Honor -- sorry. My name is Dmitri  
14 Maxim, and I wanted to add something else to the discussion.  
15 If it's possible just for a moment.

16 THE COURT: I think the time, Mr. Maxim, has left, but  
17 if you want to raise an issue that has not been raised, you may  
18 do so very quickly. I've read -- I have your letter and I've  
19 read it, and I considered it in my ruling.

20 MR. MAXIM: Yeah, but this is little bit different.  
21 The problem for CIT was the cost of funds and this broken one  
22 was an off the track funds isn't on the marketplace. And some  
23 groups of investors and bondholders and take advantage of this  
24 situation, and then they do finally, when the possibility of  
25 this prepackaged bankruptcy would be accepted by the Courts,



1 they will gain substantially because they were buying bonds at  
2 the very low price, and now they will be getting money back,  
3 and they will be getting equity. So it's like again, issue of  
4 fairness.

5 THE COURT: Well, I have your letter, Mr. Maxim, and I  
6 don't have power, as you request there, to award shareholders  
7 an ownership stake in the new company. I can only either  
8 confirm or refuse to confirm the plan. As to trading in the  
9 bonds, as far as I am aware, it is lawful for parties to buy  
10 and sell bonds in the marketplace, and that if you buy at a  
11 certain price, you are still entitled to put in your claim as a  
12 bondholder for the principal in interest on the bond. That's a  
13 fundamental principal of bankruptcy law, and I believe the  
14 principals go back to the founding of the Constitution that's  
15 just been referred to and the assumption of the debt of the  
16 various states by the federal government. So that goes back a  
17 long ways. However, I can only deal with today, and I have  
18 your letter and statement.

19 MR. MAXIM: Okay, thank you very much.

20 THE COURT: Thank you. All right, Mr. Galardi. What  
21 else do we need to do --

22 MR. GALARDI: Your Honor, just --

23 THE COURT: -- with regard to confirmation?

24 MR. GALARDI: I think, Your Honor, I think the  
25 declaration --

1 THE COURT: I think we can let Mr. Duffy stand down --

2 MR. GALARDI: Yeah, I think that'd be a good idea.

3 THE COURT: -- from the stand. All right.

4 MR. GALARDI: Your Honor, just briefly, to respond to  
5 the CVR issue --

6 THE COURT: Thank you.

7 MR. GALARDI: -- and the length of time. I think it's  
8 worthwhile. And again, Mr. Ying is in the courtroom and could  
9 testify to this, but Your Honor, with respect to the CVRs,  
10 there was, actually, heavily negotiated the time frame for  
11 which this would reign out. Mr. Ying, and we can put him on  
12 the stand, but --

13 THE COURT: Will you state who Mr. Ying is?

14 MR. GALARDI: Yes, Mr. Ying is a senior managing  
15 partner at Evercore. Your Honor, the problem with --

16 THE COURT: State who Evercore is.

17 MR. GALARDI: Evercore is a financial advisor,  
18 investment banker to the company who helped construct the plan.  
19 Your Honor, the longer the CVRs stay out there, the less the  
20 value of the common equity because it puts a drag on the  
21 company. So unfortunately, there were negotiations about the  
22 length of time that the CVRs would be out there, but as we  
23 extend that time, we are actually diminishing the return of  
24 those people that are actually getting the common equity, the  
25 senior classes. So unfortunately, though there was back and

1       forth, it was a compromise and settlement on that sixty day  
2       period. And I don't think that we have any discretion under  
3       the plan without damaging the recoveries to the senior classes  
4       to extend that period of time. But I thought I'd put that on  
5       the record for Your Honor.

6               THE COURT: All right.

7               MR. GALARDI: If you needed Mr. Ying, he is in the  
8       courtroom.

9               THE COURT: No, as I said before, I don't have the  
10      power to rewrite the plan. I can only either confirm it or  
11      deny confirmation.

12              MR. GALARDI: Your Honor, with respect, then, to the  
13      balance of the affirmative evidence, I think it's satisfied  
14      with respect to confirmation of the plan, the valuations, the  
15      projection, the liquidation analysis, it's all been set forth  
16      in the declarations. I think we've addressed the objections,  
17      as Your Honor has addressed, so we think there is good grounds  
18      to confirm the plan as drafted and as amended. I would also  
19      note, Your Honor, just a few things.

20              One, with respect to those amendments that have  
21      actually happened post solicitation or over the last couple  
22      days, I'll call them special interest modifications, as we have  
23      settled in final documentation, you'll see such things as  
24      Citibank's being included in the exculpation and limit -- the  
25      exculpation --

1 THE COURT: Right, I think you should just put on the  
2 record the material modifications that have been made.

3 MR. GALARDI: Well, Your Honor, I don't believe that  
4 there are any material modifications --

5 THE COURT: All right.

6 MR. GALARDI: -- that would reflect any differences in  
7 recoveries or affect, materially, anybody's rights. These were  
8 more, as I said, special matters, nothing of a material sort.

9 In addition, Your Honor, although we filed a  
10 confirmation order yesterday, we have a revised confirmation  
11 order today that simply includes, for example, Citibank and the  
12 exculpation and limitation of liability, and we note that the  
13 banks who had the option to elect junior credit facilities, no  
14 one has elected junior credit facilities, so there's a deletion  
15 of references to the junior credit facilities. Again, no  
16 material modifications to the plan since solicitation has  
17 closed, and no material modifications to any of the orders.  
18 They are really to reflect final agreements and documents, as  
19 we have moved rather quickly.

20 The only other aspect of the confirmation order that I  
21 would like to address with Your Honor is we have sought a  
22 waiver of the stay to go effective as soon as possible. I  
23 believe that's now a fourteen-day stay. We have sought a  
24 waiver of that period. The hope is if Your Honor sees fit to  
25 confirm this plan, that the company would have a confirmation

1 order entered as early as today and finish up the mechanics of  
2 issuing the securities and go effective as early as December  
3 10th.

4 Your Honor asked me when I started these cases, what  
5 was the need for speed. I gave you the grounds of the need for  
6 speed. I would simply reiterate that those same grounds exist  
7 today as to the reasons why we wanted to go through this  
8 bankruptcy case as fast as possible. Again, we are the fifth  
9 largest bankruptcy, one of the largest financial services  
10 companies to ever file bankruptcy, and in that respect, well, I  
11 think the only large financial services company that,  
12 hopefully, will emerge from a bankruptcy. There are, as Your  
13 Honor's pointed out, billions of dollars of debt that are  
14 awaiting the issuance of the liens, and the new -- I'm sorry,  
15 the new debt that are secured by liens as well as the new  
16 equity. And we have a business that does not simply stay well  
17 in bankruptcy. I think our customers have stayed with us, the  
18 regulators have stayed with us. But the earliest that we --  
19 the earlier that we can consummate the plan, the better for the  
20 business, and the more likely it is that the equity that we're  
21 issuing will, in fact, be worth what we have said in the plan,  
22 the 8 billion dollars number, or if not even higher, we hope.  
23 And I think the earlier we issue and go effective the CVRs have  
24 a greater chance of having value.

25 So Your Honor, we would ask, as part of the

1 confirmation order, that there be a waiver of the stay period.  
2 We don't think that there have been, though serious,  
3 significant, and obviously, personally trying objections to the  
4 plan, we don't believe that under the Bankruptcy Code --

5 THE COURT: Was that in your proposed -- that's in  
6 your proposed confirmation.

7 MR. GALARDI: That is in our proposed order. It has  
8 been.

9 THE COURT: It's been in there.

10 MR. GALARDI: Yes, it has been. No one has objected  
11 to that, Your Honor.

12 THE COURT: All right.

13 MR. GALARDI: So we would ask that we be able to go  
14 effective as soon as practical, for our standpoint, after the  
15 confirmation order, and we hope that that date is, as I said,  
16 December 10th.

17 THE COURT: All right, does anyone wish to be heard?

18 All right, does anyone wish to be heard with regard to  
19 the form of confirmation order? It's been on the docket. I  
20 may have some very minor changes, but I'll bring them to  
21 counsel's attention.

22 MR. GALARDI: Thank you.

23 THE COURT: They're not material, but I did want to  
24 ask two questions -- or one question. I see, in the most  
25 recent confirmation order, a provision with regard to the class

1 actions --

2 MR. GALARDI: Correct, Your Honor.

3 THE COURT: -- as being unaffected, in effect, by the  
4 bankruptcy and the -- I'm paraphrasing, I'm not sure that's  
5 exactly the right action -- at least unaffected in terms of  
6 going against insurance or going against nondebtor parties, is  
7 that correct?

8 MR. GALARDI: Correct, Your Honor.

9 THE COURT: And that's -- I assume that that  
10 constitutes those class actions are your Class 14, which is the  
11 510(b) class, is that correct?

12 MR. GALARDI: Correct, Your Honor. And Mr. Etkin is  
13 here and he negotiated that language on behalf of those to  
14 preserve, essentially, your insurance.

15 THE COURT: So that, basically, constitutes the  
16 agreement of Class 14 to the plan.

17 MR. GALARDI: I wouldn't go so far as to say that.

18 THE COURT: More or less.

19 MR. GALARDI: It shows an indication that they were  
20 aware and understand and that we have preserved --

21 THE COURT: They have not objected to the plan,  
22 anyway.

23 MR. GALARDI: They have not objected, correct.

24 THE COURT: And they're well represented.

25 All right, and the other thing is I think you have two

1 financings that are being approved in the confirmation -- or  
2 finally approved in the confirmation order. Exit financing and  
3 is there the Chinese?

4 MR. GALARDI: Well, it's --

5 THE COURT: I'm not sure.

6 MR. GALARDI: Yes, there's the Chinese facility --

7 THE COURT: I need proffers. You want a good faith  
8 finding sort of financing, so I'll need proffers.

9 MR. GALARDI: Absolutely, Your Honor. Let me go back  
10 to Mr. Duffy again. If called as a witness, Your Honor, Mr.  
11 Duffy would affirm that in connection with this plan, the  
12 guarantees at that the CIT Group, Inc. is a guarantor of a  
13 certain facility in China, that as a result of the filing of  
14 CIT Group, there would have been a default in that facility.  
15 Therefore, the Chinese facility, lenders under the Chinese  
16 facility would have had a right to exercise certain remedies,  
17 including foreclosing on their collateral in China. That over  
18 the course of the last two weeks, the company has negotiated in  
19 good faith with the lenders, including Citibank who's  
20 represented here, today, as their agent. With respect to a  
21 resolution of that default, that the lenders on that facility  
22 were not willing to simply stand down with a reinstatement of  
23 that guarantee in light of the secured debt that is being put  
24 senior to it. That a result of those negotiations, the parties  
25 have agreed to enter into an agreement that provides for the



1 cash collateralization of that facility for a period of time to  
2 the maturity or just short of the maturity until such time as  
3 the company can pay off that facility or refinance the  
4 facility. And in addition, Mr. Duffy would testify that if the  
5 facility had to be paid off, that it would be treated as an  
6 equity investment in that company, and it could have locked the  
7 amount, which I believe is about 242 million dollars, in China  
8 and would have been money that was trapped and not otherwise  
9 available the company, absent a sale.

10 Again, the parties have negotiated over the last two  
11 and a half weeks. Mr. Smolinsky has represented Citibank, the  
12 lenders, and as a result of those negotiations, we are asking  
13 for Your Honor to approve the cash collateralization of that  
14 facility.

15 The steering committee of lenders, whose money we  
16 needed to have an amendment of that facility to approve, have  
17 been involved with that, and it is -- we have received an  
18 amendment to make that cash collateralization.

19 THE COURT: All I need is a proffer that the parties  
20 have negotiated in good faith and at arm's length and there are  
21 no secret side deals.

22 MR. GALARDI: Your Honor, I would say over the last  
23 two and a half weeks --

24 THE COURT: I think you already said that.

25 MR. GALARDI: Fine. And Your Honor, if it's simpler

1 for us to say the same thing with respect to the BofA and the  
2 exit facility, that has been negotiated.

3 THE COURT: I think that's been before the Court  
4 before.

5 MR. GALARDI: That has.

6 THE COURT: All I need is a proffer that the parties  
7 have negotiated in good faith, at arm's length, and that there  
8 are no --

9 MR. GALARDI: Your Honor --

10 THE COURT: -- undisclosed side deals.

11 MR. GALARDI: Your Honor, again, there is no  
12 undisclosed deals. The parties have gone back and forth over  
13 months with respect to that facility and the other facilities.  
14 The transactions are going to be characterized by good faith,  
15 arm's length negotiations, as Mr. Duffy would testify, as Mr.  
16 Ying would testify, as well.

17 THE COURT: All right. I think based upon the entire  
18 record, the plan is confirmed under the provisions of the  
19 Bankruptcy Code. I commend the parties for having been able to  
20 reach an agreement, most of which was reached prior to the date  
21 of the filing. I recognize the filing is taking place -- the  
22 case took place very quickly, but it was preceded by many  
23 months of negotiations, and it would not do the debtors any  
24 good to remain in Chapter 11 any longer than they need to.

25 I've carefully considered the objections, and I

1 recognize the hardship that is imposed on many shareholders,  
2 both preferred and common, and also on bondholders. But we  
3 can't ignore the need for restructuring. If a company that has  
4 fundamental values, as I am sure this one does, does not  
5 restructure and does not get in a position to take its  
6 appropriate place in the marketplace, it will ultimately fail  
7 entirely, and that will do no one any good. Either the  
8 stockholders or the debtholders or the employees or other  
9 stakeholders interested in the company. Therefore, we  
10 restructure companies as best we can, and this company has been  
11 restructured in an extremely professional and appropriate  
12 manner that is consonant with the Bankruptcy Code.

13 So I congratulate those who have put in countless  
14 numbers of hours on the transaction, and I'll sign an  
15 appropriate confirmation order. I'm not sure if I have a disk,  
16 but you can hand one up after the hearing.

17 Anything else today?

18 MR. GALARDI: Just one point on that order, Your  
19 Honor. Because of -- I mentioned it -- there are junior credit  
20 facilities which are no longer being issued which I didn't  
21 think Your Honor wanted three more inches of paper this morning  
22 to revise those documents, so the confirmation order will say a  
23 plan, which will not change, and then the plan has exhibits.  
24 We will -- those exhibits will change because certain  
25 collateral documents don't come out. What we intend to do, and

1 I think, actually, for people reading the docket afterwards, is  
2 the confirmation order will approve the plan, the exhibits will  
3 be, say, filed later. So what we'll do in the next three  
4 business days, and this is part of the revised order, we will  
5 file the plan with the final form of exhibits so it is a matter  
6 of record within the next two business days but does reflect  
7 that there's no longer junior credit facilities. But as Your  
8 Honor can imagine, three inches of paper to make that work  
9 today and then put it on Your Honor's desk at 8 a.m. this  
10 morning, I didn't think it was good for Your Honor or good for  
11 us.

12 THE COURT: Well, I'm sure it was not good for the  
13 people who put in an enormous amount of hard work and many late  
14 nights, and I hope very much that some parties get some respite  
15 going forward. Thank you, very much.

16 MR. GALARDI: Thank you, Your Honor.

17 MR. LEININGER: Excuse me, excuse me? Excuse me.

18 THE COURT: Yes.

19 MR. LEININGER: My name is Wilmer Jay Leininger.

20 THE COURT: Yes.

21 MR. LEININGER: And you asked if there was anything  
22 else today. I submitted a personal letter.

23 THE COURT: Yes, I have -- I have -- were you on the  
24 call? Have you been on the call since the beginning?

25 MR. LEININGER: No, I have not.

1 THE COURT: Well, Mr. Leininger, we took up all the  
2 objections one by one, and we closed the -- the record is now  
3 closed. I have your objection, and as I stated on the record,  
4 I considered each of the objections in connection with my  
5 decision approving the plan. We had parties who were both  
6 stockholders and debtholders who appeared on a timely basis and  
7 whose objections were considered. And I can reach for yours  
8 right now and assure you that it was one of the ones that --

9 MR. LEININGER: What I would like to know is what  
10 impact this decision has on my situation.

11 THE COURT: I think -- I think you need to contact  
12 debtors' counsel who can -- you didn't leave a phone number on  
13 your letter, but debtors' counsel can contact you and explain  
14 anything that you do not understand. I see you have a large  
15 holding of 6.25 percent notes, and the plan sets forth  
16 precisely what you get. We had testimony today as to why the  
17 debtors' book value of 5 billion dollars was not determinative,  
18 and if you have any questions with respect to exactly what your  
19 bonds will receive, I suggest you call Mr. -- I'll give you the  
20 phone number of debtors' counsel.

21 MR. GALARDI: 212-735-2276.

22 THE COURT: 212-735 --

23 MR. GALARDI: 2276.

24 THE COURT: 2276, and that is Mr. --

25 MR. GALARDI: Silverberg.

1 THE COURT: Mr. Silverberg. So call him this  
2 afternoon.

3 MR. LEININGER: Well, I did talk with him --

4 THE COURT: All right.

5 MR. LEININGER: -- prior to the hearing, and he was  
6 unable to tell me what impact it would have.

7 THE COURT: Well, then he'd better talk to his  
8 cocounsel so he can tell you or put in writing and repeat, word  
9 for word, the words of the disclosure statement which show you  
10 what you get. And if Mr. Silverberg can't do that, then I  
11 suggest you talk to Mr. Galardi of his firm, and Mr. Galardi,  
12 I'm sure, will be capable of telling you what you get under the  
13 plan. Or pointing you or faxing you the precise page. Now, I  
14 don't have your phone number, so it's up to you to call Mr.  
15 Silverberg this afternoon.

16 MR. LEININGER: I think the phone number's in the  
17 letter.

18 MR. GALARDI: It's at the bottom of the packet.

19 THE COURT: It's in the bottom?

20 MR. GALARDI: 484, I think it is.

21 THE COURT: Oh, yes, it's in the text. All right,  
22 then Mr. Silverberg can call you.

23 All right, I think this hearing is now concluded.

24 MR. GALARDI: Thank you for your time, Your Honor.

25 (Proceedings concluded at 12:21 PM)

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## C E R T I F I C A T I O N

I, Dena Page, certify that the foregoing transcript is a true  
and accurate record of the proceedings.

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Dena Page

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: December 9, 2009